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Supreme Court, U.S.
FILED

No. 98 129 JUN 8 1998

In The OFFICE OF THE CLERK

Supreme Court of the United States

October Term, 1997

Cicely Ann Procopio,
a minor, by and through her next friend and mother,
Suzette Procopio,
in Propria Persona,

Petitioner

vs

UNIVERSITY SCHOOL OF NOVA SOUTHEASTERN UNIVERSITY,
individually and in its
official capacity as a not-for-profit
corporation authorized to do business in the State of Florida,
et al

Respondent

Petition for Writ of Certiorari

Cicely Ann Procopio, a minor,
by and through her next friend and mother,
Suzette Procopio,
in Propria Persona, Sui Juris
2564 NW 89 Drive
Coral Springs, Florida 33065
(954)345-5492
Petitioner

29 pp

Question Presented

Was Appellant denied due process when the Trial Court entered summary judgement absent a hearing on the merits?

Parties to the Proceeding

Cicely Ann Procopio, a minor,
by and through her next friend and mother,
Suzette Procopio, in Propria Persona, Petitioner

UNIVERSITY SCHOOL OF NOVA SOUTHEASTERN
UNIVERSITY, Respondent

Patricia Jacobson, Respondent

Mary Mizell, Respondent

Fred Malan, Respondent

Robert Pomeroy, Respondent

Jay St.John, Respondent

Ovid Lewis, Respondent

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I. The Petition should be granted because the opinion below erred by stating that Petitioner failed to state a claim under 42 U.S.C. § 1985 (3).

II. The Petition should be granted because the opinion below erred and abused its discretion by requiring a pro per to meet the same standards as an attorney. Substance not form is the issue. The opinion below dismissed said claims because Petitioner requested damages and relief under inappropriate statutes.

III. The Petition should be granted because the opinion below erred by not allowing the case to fully develop. The Lower Court may or may not be correct. It was simply inappropriate to make a determination at that stage of the proceedings where the court must construe the allegations as true.

IV. The Petition should be granted because the opinion below erred by denying Petitioner her constitutional right to access the courts and her right to redress of grievance with her government. Petitioner was denied due process when the Trial Court entered summary judgement absent a hearing on the merits.

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Appendix

Appendix A - Opinion of the United States Court of Appeals for the Eleventh Circuit - Filed March 10, 1998

Appendix B - Order of the United States District Court Southern District of Florida - Filed February 28, 1997

Petitioner Cicely Ann Procopio, by and through her next friend and mother, Suzette Procopio, in Propria Persona, respectfully request that a writ of error be issued to review the judgement of the United States Court of Appeals for the Eleventh Circuit in this case.

Statement of Jurisdiction

The judgement of the United States Court of Appeals for the Eleventh Circuit ("Court of Appeals") was entered on March 10, 1998. (Appendix A) The Court of Appeals affirmed the lower court's ruling. (Appendix B)

The jurisdiction of this Court is invoked under Article III, United States Constitution and 28 U.S.C. §1331 and §1343.

Constitutional and Statutory Provisions Involved

Fourteenth Amendment Constitutional rights of property, liberty, equal protection of the laws and due process

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Petitioner was enrolled and accepted at University School of Nova Southeastern University, Florida, (hereinafter "Nova"), a private secondary school in the State of Florida, since the 1995-1996 school year. In order to enter certain advanced sophomore classes in the fall, Petitioner chose to enroll in a Geometry class during the summer of 1996. In September 1996, Petitioner began her sophomore year at Nova. On or about October 8, 1996, Respondent's investigating board interrogated Petitioner regarding any involvement with, inter alia, thirteen (13) pilfered Geometry tests. The Respondent's investigating board charged Petitioner with receiving one of the pilfered tests during the 1996 Summer Session. Investigating board/committee, (hereinafter "board"), is comprised of the following five (5) Respondents: Jacobson, Malan, Mizell, Pomeroy, and St. John.

Respondent's board determined that the person who pilfered the tests also sold the tests to some of the Summer Session students. **During the investigation, the student who pilfered the**

tests specifically told the board that Petitioner was offered the tests and refused to purchase them. Two (2) other students, Student 'A' and Student 'B', also attending the Summer Session Geometry class did ultimately admit to purchasing all of the Geometry tests offered by the person who pilfered them.

Respondents, jointly and severally, alleged that Petitioner received or conspired to receive one of the pilfered Geometry tests via facsimile.

Of the two (2) students who admitted to purchasing the pilfered Geometry tests, Student 'A' implicated Petitioner by stating that she faxed Petitioner one (1) of the thirteen (13) tests, however, during the board's investigation, Student 'A' could not identify which test was faxed or when it was faxed to Petitioner and therefore the allegation by this student remains unsubstantiated.

The second of two (2) students who admitted to purchasing the pilfered Geometry tests, Student 'B' vacillated his testimony both for and against the Petitioner during the investigation and

Petitioner alleged he was an unreliable witness. Petitioner's investigation revealed that Student 'B' only had hearsay knowledge of the faxed test. He did not witness the event nor does he know which test was allegedly faxed or when the incident occurred.

After Petitioner's expulsion, on or about November 1, 1996 Petitioner's mother enrolled Petitioner in Coral Springs High School, (a Broward County local public high school), and signed a form requesting Petitioner's transcript from Nova. Approximately three (3) weeks later, under an undated cover letter, Ms. Connie Mulcahy, Nova's Registrar, transmitted Petitioner's official transcript to Coral Springs High School which clearly states Petitioner "withdrew" and was not dismissed as stated in the Respondent's letter to Petitioner's mother dated October 30, 1996. Further, the official transcript does not reflect credit for or show that Petitioner attended summer Geometry class.

During a lengthy conversation, on or about October 31, 1996 with Respondent St. John, Petitioner's mother repeatedly and explicitly refused to withdraw Petitioner from Nova.

Student 'A' and Student 'B', who confessed to purchasing all thirteen (13) of the pilfered Geometry tests are currently attending Nova; they were suspended for five (5) days and lost credit for Geometry. The student who pilfered the tests and sold them was reportedly expelled, and lost his Geometry credit. At least two (2) other summer school students who admitted to purchasing one (1) test, each received a suspension, and to the best of Petitioner's knowledge, did not lose their math credit. Conversely, the Petitioner was verbally "expelled" on October 8, 1996, a letter deemed her "dismissed" on October 30, 1996, and finally the Respondents arbitrarily "withdrew" the Petitioner as per her official transcript. For a student who has an impeccable record, and Respondents who have insufficient incriminating evidence, (if any), expulsion is not only outrageous, but clearly constitutes cruel and unusual punishment and discrimination. Moreover, Petitioner asserts that the board selectively enforced rules.

It is significant to note that Petitioner has always had a clean record and excellent grades. This Petitioner has no violation

on her record, not a dress code violation, not a gum chewing violation, her record is pristine. She comes before this Honorable Court with 'clean hands'. As a direct and proximate result of the foregoing, Petitioner, by the Respondent's actions in concert conspiracy with others, has suffered or was cause to be suffered, severe mental and emotional distress.

The acts of all Respondents described above were performed with malice and deceit along with manipulation of records under color of school authority with willful and wanton disregard of Petitioner's rights secured under the Fourteenth Amendment of the U.S. Constitution and in contravention of regulation Florida State Statutes and Code of Ethics of the Educational Profession in Florida.

Petitioner's reasonable expectation of a continuing, uninterrupted education, due process of law, property and liberty rights and equal protection under the law

The Petitioner filed a 'first amended complaint' and a motion for 'temporary injunctive relief' under Title 42 Section 1985

of the United States Code on the 12th day of February, 1997. Petitioner alleges that Respondents violated Petitioner's Fourteenth Amendment Constitutional rights of property, liberty, equal protection of the laws and due process.

As a direct result of the dismissal by the Trial Court, Petitioner filed this appeal and argues that the Trial Court erred in a gross abuse of discretion when it prematurely dismissed this action without allowing the record to be more fully developed. The Trial Court may or may not be correct. It is simply inappropriate to make that determination at this stage of the proceedings where the court must construe the allegations as true.

ARGUMENT

1. In the Final Order of Dismissal, the District Court asserts that the Petitioner has failed to state a claim under § 1985 (3). The District Court asserts the deficiency is that the Petitioner failed to allege that the Respondent's actions against her were motivated by the Petitioner's membership in a protected class. On page 4 of the District Court's Final Order of Dismissal it states:

> In the First Amended Complaint filed herein (DE 34), the Plaintiff has failed to allege that the Defendants' actions against her were motivated by the Plaintiff's membership in a protected class. Accordingly, the Plaintiff has failed to state a claim under 42 U.S.C. § 1985 (3).

There are four (4) elements that must be established in order to prove conspiracy: (1) conspiracy; (2) for purpose of depriving either directly or indirectly any person or class of persons of equal protection of laws, or of equal privileges and immunities under laws; (3) act in furtherance of conspiracy; and (4) whereby person is either injured in his personal property, or deprived of right, or privilege of citizen of United States.

The second element clearly states 'for purpose of depriving either directly or indirectly any person **or** class of persons....' The connector is 'or' not 'and'. In this case, a person was deprived, not a class of persons. Moreover case law supports the fact that this case should not be dismissed for failure to state a claim:

> A complaint will not be dismissed for failure to state a claim, even though inartistically drawn and lacking in allegations of essential facts, it cannot be said that under no circumstances will the party be able to recover. (12b:34 Fr Serv 29, 19 Fd 511 DCED Pa 1958)

2. The Lower Court asserts that because the Petitioner requested damages and relief under inappropriate statutes (18 USC §§ 3571, 241, 242, 371 and 1001 and 28 USC § 2201 and § 2202), said claims are dismissed. The Trial Court Judge abused his discretion, as he is requiring a pro per to meet the same standards as required by an attorney.

Petitioner has been severely wronged. Even though this pro per may not be using the proper statutes, it is the duty of the Court to see that all issues are fairly addressed:

> Complaint may not be dismissed for failure to state a claim if there is a possibility that plaintiff could obtain some relief on the facts stated, even though plaintiff may not have prayed for the appropriate relief. (US vs White County Bridge Commission, 2 Fr serv 2d 107, 275 F 2d 529 Ca 7 1950)

> Citing Estelle v Gamble, 97 S.Ct. 285, 429 U.S. 97, 50 L.Ed.2d The handwritten pro se document is to be liberally construed. As the Court unanimously held in Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), **a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'** Id., at 520-521, 92

S.Ct. at 596, quoting Conley v Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). (Emphasis added)

3. The Lower Court erred in granting the motion to dismiss the complaint as the Lower Court did not allow the case to fully develop. The Petitioner has not had the opportunity to respond to Respondent's comments regarding the complaint.

> A complaint may not be dismissed on motion if it states some sort of claim, baseless though it may prove to be and inartistically as the complaint may be drawn. This is particularly true where the plaintiff is not represented by counsel. Brooks v. Pennsylvania R. Co., 91 F. Supp. 101 (DC SD NY, 1950).
>
> Pro se complaints, according to the Supreme Court, are held "to less stringent standards than formal pleadings by lawyers," and regardless of who represents the plaintiff, **a motion to dismiss is not to be granted unless it appears beyond doubt that the plaintiff can prove no set of acts which would entitle him to relief.** Haines v. Kerner, 1972, 404 U.S. 519, 30 L. Ed. 2d 652, 92 S. Ct. 594, 496, Reh. Den., 405 U.S. 948, 30 L. Ed. 2d 918, 92 S. Ct. 963. (Emphasis added)
>
> The Haines test is not whether the facts alleged in the complaint would entitle the plaintiff to relief. Rather, it is whether the Court can say with assurance on the basis of the complaint that, beyond any doubt, no set of facts could be proved that would entitle the plaintiff to relief. The reasons for the Haines test are manifest. **A pro se complaint provides an unsatisfactory foundation for deciding the merits of important questions because**

> **typically it is inartfully drawn, unclear, and equivocal, and because thorough pleadings, affidavits, and possibly an evidentiary hearing will usually bring out facts which simplify or make unnecessary the decision of questions presented by the naked complaint....**
>
> **Admittedly, it is tempting to eliminate the meritless complaint at the pleading stage. Unfortunately, this "is another instance of judicial haste which in the long run makes waste,"** Dioguardi v. Durning, 139 F.2d 774, 775 (C.A.2 1944) (Clark, J.), cited with approval in Haines v. Kerner, 404 U.S. 519, 521, 92 S.Ct. 594, 596, 30 L.Ed.2d 652 (1972). (Emphasis added)

4. The lower court erred by denying the Petitioner her constitutional right to access to the courts and her right to redress of grievance with her government and although such denial constitutes reversible error, additional damage is incurred due to the passage of time.

> It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Boyd vs United States, 116 U.S. 616 1886.
>
> Those then, who controvert this principle that the Constitution is to be considered in court as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the Constitution and see only the law. This doctrine would subvert the very foundation of all written constitutions. Marbury v. Madison, 5 U.S. 137, 176.

> The Bill of Rights was provided as a barrier, to protect the individual against arbitrary exactions of...legislatures, (and) courts...it is the primary distinction between democratic and totalitarian way. Re Stroller, Supreme Court of Florida, en banc, 36 So. 2nd 443, 445 (1948)

> ....and in all courts persons of all persuasions may freely appear in their own way, and according to their own manner and there plead their own causes themselves, or if unable, by their friends. Constitution for the Province of East Jersey (1683).

> The lower Court is depriving Appellant of due process and fair and equal treatment under the law. If the Appellant cannot receive justice from the Court system, where then, shall he look. Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the law, the end justifies the means....would bring terrible retribution. "Against that pernicious doctrine this court should resolutely set its face." Justice Brandeis, Olmstead v. United States, 277 U.S. 438, 485. (1928).

Reasons for Granting the Writ

I. The Lower Court erred in ruling that Petitioner failed to state a claim under 42 U.S.C. § 1985 (3).

II. The Lower Court erred and abused its discretion, by requiring a pro per to meet the same standards as an attorney. Substance, not form is the issue. The Lower Court dismissed said claims because Petitioner requested damages and relief under inappropriate statutes.

III. The Lower Court erred in granting the motion to dismiss the complaint as the Lower Court did not allow the case to fully develop. The Lower Court may or may not be correct. It was simply inappropriate to make a determination at that stage of the proceedings where the court must construe the allegations as true.

IV. The Lower Court erred by denying the Petitioner her constitutional right to access the courts and her right to redress of grievance with her government, and although such denial constitutes reversible error, additional damage is incurred due to the passage of time. Petitioner was denied due process when the Trial Court entered summary judgement absent a hearing on the merits.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by US Mail to Heidi Friedman, **PANZA, MAURER, MAYNARD & NEEL, P.A.**, NationsBank Building 3600 North Federal Highway, Third Floor, Fort Lauderdale, Florida 33308 on this 10th day of July, 1998.

Suzette Procopio, a Common Law
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"All Rights Reserved"
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Appendix A - Opinion of the United States Court of Appeals for the Eleventh Circuit - Filed March 10, 1998

Appendix B - Order of the United States District Court Southern District of Florida - Filed February 28, 1997

Appeal from the United States District Court
for the Southern District of Florida

(March 10, 1998)

Before ANDERSON, COX and CARNES, Circuit Judges.

PER CURIAM:

We have carefully reviewed the briefs and the record and agree with the district court that the appellants' claims must be dismissed for the reasons stated in the lower court's order.

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 97-6045-CIV-ZLOCH

CICELY ANN PROCOPIO,

Plaintiff,

vs. **FINAL ORDER OF DISMISSAL**

UNIVERSITY SCHOOL OF NOVA, et al.,

Defendants.

_____/

THIS MATTER is before the Court upon the Defendants', Motion To Dismiss Plaintiffs' Amended Complaint, Motion to Strike Damages and/or Motion for Attorneys Fees and Sanctions (DE 40). This Court has carefully reviewed the merits of said Motions, and is otherwise fully advised in the premises.

I. BACKGROUND

In the First Amended Complaint filed herein (DE 34), the Plaintiff, by and through her mother, alleges that she attended, as a freshman, the University School of Nova Southeastern University (hereinafter 'School'), a private secondary school, for the 1995-1996 school year. Following her freshman year, during the summer of 1996, the Plaintiff enrolled in a geometry class offered by the

School. During the summer session, another student acquired thirteen geometry tests and then sold these tests to other students. In October 1996, the School charged the Plaintiff with receiving one of the stolen tests during her enrollment in the geometry class.

During the school's investigation, however, the student who stole the tests told the investigating committee that the Plaintiff was offered the stolen tests but refused to purchase these tests. Moreover, two students who attended the geometry class admitted to purchasing all of the stolen geometry tests. However, one of the students who admitted to purchasing the tests, stated that she sent the Plaintiff, by facsimile, a copy of one of the stolen tests. Ultimately, the School expelled the Plaintiff.

The Plaintiff asserts that the School did not provide notice and an opportunity to be heard prior to the expulsion. The Plaintiff did have an 'informal appeal' at which she was represented by an attorney. Nevertheless, the School subsequently affirmed the Plaintiff's expulsion.

After the Plaintiff's expulsion from the School, she enrolled

at a local public high school. The Plaintiff's mother then requested a transcript be forwarded from the School to the public high school. The Plaintiff alleges that the transcript misrepresents that the Plaintiff 'withdrew' from the School. Furthermore, the Plaintiff alleges that the transcript did not reflect credit for the summer geometry class.

In the above-styled cause, the Plaintiff asserts claims pursuant to 42 U.S.C. § 1985 (3) against the School and various school officials. Essentially, the Plaintiff alleges that the School, the members of the investigatory board and the President/Chief Executive of the School engaged in a conspiracy to deprive the Plaintiff of her liberty and property interests without due process in violation of the Fourteenth Amendment. Specifically, the Plaintiff asserts that she was not given notice and a hearing prior to her expulsion. The Plaintiff further alleges that the Defendants convicted her on vague and ambiguous charges and falsified school records. The Plaintiff further alleges that her expulsion constitutes cruel and unusual punishment. The Plaintiff further alleges that the

School denied her of right to an education for sixteen days. Finally, the Plaintiff alleges that in expelling her, the School did not follow the guidelines set forth in the School's Student and Parent Handbook and various state administrative provisions.

II. DISCUSSION

As previously noted, the Plaintiff has asserted §1985 (3) claims against the Defendants. The elements of a cause of action under §1985 (3) are: (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived on any right or privilege of a citizen of the United States. Childree v. UAP/GA AG Chem, Inc., 92 F.3d 1140, 1146-47 (11th Cir. 1996).

The second element "requires a showing of some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators action." Id. (internal quotation marks and

citations omitted).

In Bray v. Alexandria Women's Health Clinic, 506 U.S. 263 (1993), the United States Supreme Court interpreted this requirement as implying "more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker... selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." In the First Amended Complaint filed herein (DE 34), the Plaintiff has failed to allege that the Defendants' actions against here were motivated by the Plaintiff's membership in a protected class. Accordingly, the Plaintiff has failed to state a claim under 42 U.S.C. §1985 (3).

Furthermore, the Court notes that in her prayer for relief, the Plaintiff requests damages pursuant to 18 U.S.C. § §3571, 241, 242, 371, and 1001. These statutes are criminal in nature and do not afford a private cause of action. Therefore, to the extent that the Plaintiff attempts to assert a claim under these statutes, said claims are dismissed. Moreover, to the extent that the Plaintiff attempts to

assert a claim under 28 U.S.C. § §2201 and 2202, said claims are dismissed.

Finally, to the extent that the Plaintiff asserts any state law claims, the Court notes that 28 U.S.C. § 1367 (a) provides that

> in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

It is clear that this Court has original jurisdiction over Plaintiff's federal law claim pursuant to 28 U.S.C. §1331. After reviewing the First Amended Complaint (DE 34) herein, the Court finds that the state claims against Defendants are so related to the federal claim in the instant action that they form part of the same case or controversy. 28 U.S.C. §1367 (a). Therefore, this Court has the authority to exercise supplemental jurisdiction over the state claims in the instant action.

Nevertheless, the Court's supplemental jurisdiction inquiry does not end here. In 1990, Congress codified the formally well-

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CICELY ANN PROCOPIO,

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vs.

UNIVERSITY SCHOOL OF NOVA SOUTHEASTERN UNIVERSITY, *et al.*

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

Petitioner's application for Writ of Certiorari sets forth more than five pages of "facts" in this matter. However, in those pages are both fact and argument with which Respondent does not agree wholeheartedly. Thus, for this Court to properly evaluate the merits of the petition, the following factual clarifications must be set forth.

Petitioner was enrolled as a student in the University School division of Nova Southeastern University, a private secondary school in Broward County, Florida. During the 1996-97 school year, Petitioner was accused of academic dishonesty — a violation of the School's code of conduct.

During the investigation, a five-person Investigation Board found that, in addition to obtaining a stolen math test, Petitioner lied to the Board regarding her involvement in the incidents. Petitioner's academic dishonesty, coupled with her lack of candor and veracity to the board, resulted in her expulsion from the school.

Procedurally, Petitioner instituted this action against the University School of Nova and six employees on January 21, 1997, alleging conspiracy, discrimination and various state and federal statutory violations. The Southern District of Florida dismissed Petitioner's Second Amended Complaint with prejudice as to the federal claims. Thereafter, the trial court refused to exercise jurisdiction over the remaining state claims. As such, Petitioner's state claims were dismissed *without* prejudice.

Petitioner appealed the decision of the trial court to the Eleventh Circuit Court of Appeals. The Eleventh Circuit, after reviewing the record from the court below, affirmed the

dismissal. Thereafter, Petitioner filed this Petition for Writ of Certiorari with the United States Supreme Court.

REASONS FOR DENYING THE WRIT

The Petition in the instant case seeks review of an Eleventh Circuit opinion affirming the Southern District of Florida's dismissal of this action. The Petition set forth the following Question Presented: "[w]as Appellant denied due process when the Trial Court entered summary judgment absent a hearing on the merits?" Petitioner set forth this legal question in error, as the case at bar never advanced beyond the pleading stage in the trial court. NSU obtained a **dismissal** of Petitioner's case, and the trial court neither entertained nor granted a Motion for Summary Judgment.

As detailed below, there is no cause for this Court to review the factbound contentions and previously settled legal arguments of the Petitioner. Petitioner sets forth countless factual issues which should not be subject to review by this Court. Further, Petitioner fails to establish or even assert any sound legal grounds for reversal of the Eleventh Circuit. As demonstrated herein, Petitioner's arguments, even if regarded with wide latitude, do not give rise to review by this tribunal.

I.

PETITIONER FAILS TO SET FORTH ANY GROUNDS TO JUSTIFY REVIEW BY THIS COURT.

As an initial matter, Petitioner has failed to set forth any grounds to justify review by this Court and, in fact, this type of case is not typically reviewed by the United States Supreme Court. The United States Supreme Court sets forth the factors the Court will consider when deciding whether to grant review.

While not exhaustive, the Court sets forth the following list of factors:

> The Supreme Court will grant review if:
>
> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Supreme Court, Rule 10.

In the instant case, the Petitioner does not fall into any of the categories enumerated in the Rules of this Court. *See Id.* Petitioner does not and cannot point to any conflict among the court of appeals, and thus review under this portion of Rule 10(a) is blatantly inapplicable. *See* Supreme Court, Rule 10(a). Similarly, there is no allegation of conflict between federal law

and a state court of last resort, also precluding review under Rule 10(a). *See id.* Moreover, Petitioner does not allege that a state court of last resort conflicts with another state court of last resort, which further precludes review under Rule 10(a). Finally, Petitioner has not pointed to any important question of federal law decided by the Eleventh Circuit in the instant case. In fact, the Eleventh Circuit merely issued a one sentence, per curiam opinion affirming the trial court, and thus, review of this case under the final clause of Rule 10(a) is also inappropriate. As none of these factors exist, the Petition cannot justifiably be reviewed by this Court under this rule.

Petitioner attempts to allege a departure from the usual course of judicial proceedings in her accusations that the lower courts abused their discretion in granting and/or affirming the dismissal of Petitioner's Second Amended Complaint, a fact which could conceivably establish grounds for review under the final clause of Rule 10(a). *See id.* However, the conduct of both the trial court and the Eleventh Circuit clearly conforms to judicial protocol and established procedural standards. Therefore, review is not appropriate under this portion of Rule 10.

The Federal Rules of Civil Procedure clearly delineate the grounds for dismissal of an action. Fed. R. Civ. P. 12(b)(6); *See also Brown v. Budget Rent-A-Car Systems, Inc.*, 119 F.3d 922 (11th Cir. 1997). It is within the judge's power to dismiss an action upon proper grounds. Should a litigant take issue with the trial court's ruling, the proper remedy is an appeal to the Eleventh Circuit. Fed. R. App. P. 4.

The Eleventh Circuit has jurisdiction to evaluate the conduct of the trial court judge and to either affirm the court's ruling or express disagreement in the form of reversal. *Id.* In the instant case, Petitioner appealed her case to the Eleventh

Circuit. The Eleventh Circuit reviewed the briefs and the record *below and, based upon same, affirmed the District Court's ruling* in a per curiam opinion.

While Petitioner attempts to allege a departure from the usual course of judicial proceedings, Petitioner fails to demonstrate any abuse of discretion in the lower tribunals. Each Court acted within established procedural parameters and each Court found that Petitioner could not state a cause of action, even if the facts alleged were taken as true. As such, there is no departure from the accepted or usual course of judicial proceedings. Accordingly there is no basis to precipitate review under the final clause of Rule 10(a). *See* Supreme Court, Rule 10(a).

Additionally, Petitioner fails to set forth any important federal question decided by either a state court or Court of Appeals that has not been, but should be, decided by the Supreme Court. To the contrary, Petitioner relies *almost entirely* on law established by the United States Supreme Court and argues that this well-established law was applied incorrectly by the lower courts. The Supreme Court, however, rarely grants review "**when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law**." Supreme Court, Rule 10 (*Emphasis added*).

Indeed, the Court will ordinarily deny review of judgments based solely on questions of fact. *NLRB v. Waterman S.S. Corp.*, 309 U.S. 206, 84 L. Ed 704, 60 S. Ct. 611 (1940). Despite this, Petitioner bombards this Court with "facts" and goes to great lengths to convince this Court that the facts were not evaluated properly. This is insufficient to warrant review of this matter.

Additionally, absent extraordinary circumstances, the Supreme Court will not grant review for the alleged

misapplication of a properly stated rule of law. Nonetheless, Petitioner alleges that the trial court erred in determining that she did not allege a cause of action under section 1985 because she failed to allege that the actions against her were based on her membership in a protected class, as required. *See* Petition for Writ of Certiorari at pp. 7-8. Courts have delineated what constitutes a class for the purposes of Section 1985. *See Lake v. Arnold*, 112 F.3d 682 (3d Cir. 1997) (holding that "a private conspiracy action is predicated on 'some racial, or perhaps otherwise, class based, invidiously discriminatory animus,' " and citing sex, race, and national origin as examples). This law is well established. Nevertheless, Petitioner now seeks to have this Court review the manner in which the trial court applied the law in the case at bar. The trial court appropriately found that Petitioner failed to allege that her membership in a protected class led to her expulsion. The Eleventh Circuit agreed. Thus, Petitioner's current allegation of misapplication of the law does not warrant review by this Court.

Petitioner further asserts that the trial court misapplied the law governing dismissal of actions. *See* Petition for Writ of Certiorari at p. 8. The law is well established that an action may be dismissed if the facts, taken as true, fail to establish a cause of action upon which relief may be granted. *See Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 102, 2 L. Ed. 2d 80 (1957). Petitioner questions the lower courts' determination that her pleadings lacked substantive sufficiency. This, however is another example of the Petitioner questioning the manner in which the courts below applied the law, and does not involve the establishment of new law. As such, this assertion does not justify review by this Court.

Ultimately, Petitioner failed to set forth any of the enumerated bases upon which to grant review. Further, it is longstanding policy that the jurisdiction of the Supreme Court

over Court of Appeals' decisions **is to be used sparingly and only in cases of extreme gravity or to ensure uniformity among the Circuits.** *See Re Lau Ow Bew*, 141 U.S. 583, 35 L. Ed 868, 12 S. Ct. 43 (1891); *Fields v. United States*, 205 U.S. 292, 51 L. Ed 807, 27 S. Ct. 543 (1907). This is neither a case of extreme gravity, nor is it a case to rectify lack of uniformity among the Circuits. As such, Petitioner cannot establish sufficient grounds to predicate review, and thus, this Court should reject the instant Petition.

II.

PETITIONER FAILS TO ESTABLISH OR EVEN ASSERT ANY LEGAL GROUNDS FOR REVERSAL OF THE ELEVENTH CIRCUIT.

In addition to insufficient grounds to predicate review, Petitioner bases her Petition on inaccurate legal theories, and has failed to supply this Court with legal grounds upon which a reversal could be based. These additional shortcomings further establish that review of this case is improper.

A. The Eleventh Circuit Correctly Held that the Petitioner Failed to State a Claim Under 42 U.S.C. § 1985(3).

As the first argument in her Petition, Petitioner claims that the trial court and Eleventh Circuit erred in holding that she failed to state a cause of action under 42 U.S.C. § 1985(3). In pleading a section 1985 claim, one must allege: (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protections of the laws, or of equal privileges and immunities under the laws; and, (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of

any right or privilege of a citizen of the United States. *Childree v. UAP/GA AG Chem, Inc.*, 92 F.3d 1140, 1146-47 (11th Cir. 1996). The trial court determined that Petitioner failed to allege that Respondents' actions against her were in any way motivated by Petitioner's membership in a protected class. *See* Final Order dated Feb. 8, 1997, p. 4, attached to Petition for Writ of Certiorari as Appendix "B". It was this fact that led the trial court to appropriately dismiss the federal counts of Petitioner's Complaint.

B. Petitioner Wrongfully Asserts that the Eleventh Circuit Abused its Discretion by Requiring Petitioner to Meet the Same Substantive Pleading Standards as an Attorney.

Petitioner correctly asserts that "a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *See* Petition for Writ of Certiorari at p. 9, *citing United States v. White County Bridge Commission*, 275 F.2d 529 (7th Cir. 1950). Additionally, Petitioner correctly asserts that a complaint can only be dismissed for failure to state a claim if the plaintiff cannot prove facts that would entitle her to relief. *Id.* In the instant matter, however, Petitioner (a pro se plaintiff) was treated leniently by the Court and her pleadings were not held to the same stringent standards applied to non-pro se pleadings. Nevertheless, this leniency does not guarantee that her causes of action should be maintained. In fact, pro se litigants, while given latitude regarding the technical requirements of pleadings, must still establish the substantive sufficiency of their pleadings. As several courts have held,

> Courts do and should show a leniency to pro se litigants not enjoyed by those with the benefit of a legal education. Yet even in the case of pro se litigants **this leniency does not give a court license to serve as de**

facto counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action.

GJR Investments, Inc. v. County of Escambia, Fla., 132 F.3d 1359, 1369 (11th Cir. 1998) (*Emphasis added*, citations omitted); *see also Nicastro v. Clinton*, 882 F. Supp. 1128 (D.C. D.C. 1995) (holding that a pro se plaintiff, although held to a less stringent standard, must still present a claim upon which relief may be granted). **Accordingly, a district court is not required to manufacture facts or allegations that are not pled, even if the plaintiff is pro se.** *See Abdool-Rashaad v. Seiter*, 690 F. Supp. 598 (S.D. Ohio 1987). Further, a court "cannot rewrite an inadequate complaint to plead essential allegations in order to sustain an action. This is true even in cases involving pro se litigants." *See Pontier v. City of Clearwater, Fla.*, 881 F. Supp. 1565, 1568 (M.D. Fla. 1995). Thus, while a court will liberally construe the pleadings of a pro se litigant, this does not alleviate the plaintiff's burden of demonstrating "sufficient facts to state a legally cognizable claim." *See White v. State of Colorado*, 82 F.3d 364 (10th Cir. 1996).

In the present case, the trial court evaluated Petitioner's pleadings and allowed Petitioner opportunities to amend. *See* Final Order of Dismissal attached to Petition for Writ of Certiorari as Appendix "B." The trial court, upon evaluating the Second Amended Complaint, determined that Petitioner failed to plead facts that would entitle her to relief. *Id.* The trial court, not being obligated to "fill in the blanks" for Petitioner, determined that Petitioner failed to state a claim upon which relief could be granted. *Id.* Accordingly, the dismissal of the Complaint did not violate the leniency requirement for treatment of pro se litigants.

The legal principle that pro se litigants are to be granted leniency generally absolves a pro se plaintiff from the technical

pleading requirements and from pleading appropriate damages. *See Irizarry v. Palm Springs General Hosp.*, 657 F. Supp 739 (S.D. Fla. 1986), *see also Tuma v. Dade County Public Schools*, 1998 WL 15637 (S.D. Fla. 1998) (applying the liberal standard to correcting the title of plaintiff's pleading). Petitioner was afforded leniency regarding the technical sufficiency of her pleadings. However, as stated above, the leniency benefit does not eliminate the requirement that the plaintiff establish some cause of action upon which relief may be granted. As Petitioner did not establish a cause of action upon which relief may be granted, dismissal was proper.

Petitioner also asserts that the Eleventh Circuit abused its discretion by affirming dismissal of the instant action. In evaluating the dismissal of an action by the trial court, the Circuit Court will review the case *de novo*. *See Harper v. Blockbuster Entertainment Corp.*, 1998 WL 207893 (11th Cir. 1998). In fact, the standard of review for a motion to dismiss is the same for the appellate court as it is for the trial court. *Id.*, *citing Stephens v. H.H.S.*, 901 F.2d 1571, 1573 (11th Cir. 1990). Thus, the Eleventh Circuit Court of Appeals was required to review the case to determine if Petitioner's pleadings, taking all the allegations as true[1], could establish a cognizable cause of action. Accordingly, the Eleventh Circuit reviewed Judge Zloch's Dismissal of Petitioner's action to determine whether the facts, taken as true, could establish *any* cause of action. Finding that the Petitioner could not establish any cause of action based on the facts provided, the Eleventh Circuit affirmed the District Court's dismissal.

Petitioner incorrectly asserts that the conduct of the Circuit Court constitutes abuse of discretion. To the contrary,

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1. For purposes of a motion to dismiss, the allegations in the complaint must be taken as true. *Powell v. Lennon*, 914 F.2d 1459 (11th Cir. 1990).

> "Abuse of discretion" occurs if the judge fails to apply the proper legal standard or to follow proper procedures in making the determination, or bases an award upon findings of fact that are clearly erroneous.

In re Hillsborough Holdings Corp., 127 F.3d 1398, 1401 (11th Cir. 1997). The Eleventh Circuit did not fail to apply a proper legal standard, nor did it base its decision on findings of fact that are clearly erroneous. The Circuit Court opinion, while concise, indicates that it reviewed the record below and agreed that, taking the alleged facts as true, Petitioner failed to state a cognizable cause of action. The Circuit Court thus saw no legal cause to overturn the District Court. The court therefore acted appropriately and without any abuse of discretion.

C. Petitioner Wrongfully Asserts that the District Court Erred by Not Allowing the Case to "Fully Develop."

As her next argument, Petitioner faults the lower courts with not permitting a case initiated by a pro se litigant to "fully develop." With this assertion, Petitioner seems to imply that she is **entitled** to a trial in this cause based on her status as a pro se litigant. As other courts have stated, however,

> [w]hile courts must apply "less stringent standards" in determining whether pro se pleadings state a claim for which relief can be granted, **pro se plaintiffs are not automatically entitled to take every case to trial.** As this Court has noted, the lenient treatment generally accorded to pro se litigants has limits.

See Pilgrim v. Littlefield, 92 F.3d 413, 416 (6th Cir. 1996) (*Emphasis added*). A motion to dismiss should be granted when the plaintiff cannot prove any set of facts that would entitle her

to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 102, 2 L. Ed. 2d 80 (1957). As such, a pro se litigant is not guaranteed a trial if the facts set forth in the complaint do not entitle her to relief. In the instant case, Petitioner did not set forth facts sufficient to establish *any* cause of action. As such, the case was properly dismissed.

D. Petitioner Wrongfully Asserts that She was Denied Due Process of Law and Constitutional Access to the Courts.

As her final argument, Petitioner claims that she was denied due process of law and deprived of her constitutional right to access to the courts. *See* Petition for Writ of Certiorari at p. 11. Due process of law, however, only entitles a citizen to "notice and an opportunity to be heard." *See S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). Without deprivation of these rights, a party has been afforded due process. In the instant case, Petitioner pursued legal recourse against Respondents. When the outcome of Petitioner's legal suit in the District Court was not to her liking, Petitioner exercised her right to appeal. Thus, her due process rights were satisfied. Simply stated, **due process entitles a person to a fair proceeding, not a favorable outcome.**

Moreover, the trial court made every effort to provide Petitioner with the opportunity to assert her legal claims against Respondents. The trial court denied jurisdiction over Petitioner's state law claims, dismissing these claims *without prejudice*. *See* Final Order of Dismissal attached to Petition for Writ of Certiorari as Appendix "B." Accordingly, Petitioner was free to bring suit in state court. As such, it is preposterous to assert that there has been a denial of due process. Indeed, by filing this Petition, Petitioner continues to exercise her due process rights. However, Petitioner refuses to recognize that due process does not ensure a favorable outcome. Essentially, Petitioner is utilizing

the very emotional argument of violation of due process rights to camouflage her true petition: a petition for review of the facts, yet again.

CONCLUSION

The Petition for Writ of Certiorari before this Court should be rejected as Petitioner fails to set forth any grounds to justify review by this Court. Further, Petitioner fails to establish or even assert any legal grounds for reversal of the Eleventh Circuit.

Respectfully submitted,

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